

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:07-cr-092
Also Case No. 3:13-cv-185

-vs- : District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

RONALD HAMPTON, JR., :
Defendant.

REPORT AND RECOMMENDATIONS

This case is before the Court on Motion for Retroactive Application of the Fair Sentencing Act under 18 U.S.C. § 3582 or in the alternative for relief under 28 U.S.C. § 2255, filed May 8, 2013, by Defendant's counsel, L. Patrick Mulligan (Doc. No. 175). Apparently unaware of the significance of that Motion, Defendant has filed a *pro se* Motion to Vacate under 28 U.S.C. § 2255 (Doc. No. 178). In the meantime, the United States has filed a Response agreeing that Defendant is entitled to relief (Doc. No. 177).

The matter is referred to the undersigned pursuant to the General Order of Assignment and Reference for Dayton (General Order Day 13-01, available at www.ohsd.uscourts.gov).

It is accordingly respectfully recommended:

1. The Court should vacate the sentence in this case under 28 U.S.C. § 2255 and re-sentence Defendant under the Fair Sentencing Act;
2. Counsel's Motion for alternative relief under 18 U.S.C. § 3582 should be denied as moot; and

3. Defendant's *pro se* Motion under 28 U.S.C. § 2255 should also be denied as moot.

June 12, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).